

Appl. No. 10/665,670
Docket No. 9042M
Amdt. dated September 27, 2007
Reply to Office Action mailed on July 5, 2007
Customer No. 27752

REMARKS

Claims 1-14, 19-29 are pending in the present application. Claims 3 and 15-18 have been canceled.

Claims 1 and 2 have been amended to recite that the benefit phase is substantially anhydrous. The basis for this claim is found in original claim 3.

Claim 28 and 29 have been added. The basis for claim 28 can be found in original claim 1 and 4. The basis for claim 29 can be found in original claim 2 and 4.

Rejection Under 35 USC §103(a) Chambers (U.S. Patent No. 5,612,307, hereinafter referred to as "Chambers") in view of Hayward (U.S. Patent No. 6,534,456 hereinafter referred to as "Hayward")

Claims 1-19 are rejected under 35 USC § 103(a) as being anticipated by Chambers in view of Hayward. The Examiner states that Chambers fails to teach a physical contact between the two phases. The Examiner states that Hayward discusses the teaching of Chambers and suggests improvements in a packaged stable, extrudable, multiphase liquid cleansing composition that comprises a lamellar and isotropic phase. The Examiner states that Hayward is present in a single container and is packaged without partitions. The Examiner states that Hayward teaches that the components can be packaged without barriers when the viscosities of the two phase are compatible and that the rheological behavior of the cleansing surfactants depend on the microstructure. The Examiner states that Hayward suggests ways to control the flow properties of both phases so as to be able to pump the compositions together. The Examiner states that it would have been obvious to one of an ordinary skill in the art at time of the instant invention to optimize the rheological properties of the phases and thus, extrude them together as stripes and still be able to maintain the viscosity. Applicants respectfully traverse this rejection based on the amendment and remarks contained herein.

Chambers and Hayward are not properly combinable because the principle of operation of Chambers would be modified in view of Hayward. Modifying the principle of operation of Chambers in view of Hayward would render the compositions of

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Chambers unsatisfactory for their intended purpose by using the single chamber of Hayward. Section 2143.01 of the MPEP states that if the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959) In reading Chambers, one of ordinary skill in the art would be discouraged from having a surfactant phase and benefit agent and/or oil an emollient in physical contact within a partitionless package, as described in Hayward. In fact, Chambers further teaches "the surface active agent and benefit agent are separated in the composition, i.e. they do not directly contact one another in the composition" (See Chambers column 1, lines 63-65). Chambers states that the separation of the surfactant and benefit phase "avoids adverse interactions which may occur between these two components and resulting in ineffective deposition of the benefit agent" (See Chambers column 1, lines 65-67). Thus, taken as a whole one of skill in the art would not combine the teachings of Hayward and Chambers. Accordingly, Applicants submit that the claims are nonobvious over Chambers in view of Hayward. Therefore, the Applicants respectfully request withdrawal of the rejection on this basis.

Rejection Under 35 USC §103(a) Chambers in view of Hayward in view of Frantz, et al
(hereinafter referred to as "Frantz")

Claims 1-19 are rejected under 35 USC § 103(a) as being anticipated by Chambers in view of Frantz. The Examiner states that Chambers in view of Hayward fails to teach the claimed composition with the cleansing phase containing an alkanolamide, wherein the phase is non-Newtonian shear thinning with a viscosity of equal to or greater than 3000 cps. The Examiner states that Frantz teaches a stable surfactant composition for suspending components in a composition. The Examiner states that the surfactant containing suspending formulations comprises an anionic surfactant, water, electrolyte and an alkanolamide or imparting a free-flowing non-Newtonian shear thinning property to the composition. The Examiner concludes that it

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would have been obvious to one of ordinary skill in the art at the time the instant invention was made to employ the alkanolamide of Frantz in the cleaning phase of Chambers because Frantz suggest that the suspending phase comprises alkanolamide in addition to anionic surfactant, water and an electrolyte to impart a free-flowing and non-Newtonian shear thinning property that provides the ability to suspend components. "benefit agents" such as oils, skin care agents. The Examiner further concludes that a skilled artisan would have expected to achieve a free-flowing cleansing phase with non-Newtonian shear thinning. Applicants respectfully traverse this rejection based on the amendment and remarks contained above and herein.

Frantz does not address the deficiencies of combining Chambers and Hayward. Therefore, the present application is patentably distinct over Chamber, Hayward and Frantz. Thus, the Applicants respectfully request withdrawal of the rejection on this basis.

Conclusion

This response represents an earnest effort to place the present application in proper form and to distinguish the invention as claimed from the applied reference(s). In view of the foregoing, entry of the amendment(s) presented herein, reconsideration of this application, and allowance of the pending claim(s) are respectfully requested.

Respectfully submitted,

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